

October 23, 2001

Ms. Beverly Harper
Assistant Planner
P.O. Box 66
Eastville, Virginia 23347

Dear Ms. Harper:

This letter is in response to your question regarding the use of herbicides in the RPA buffer area. You described a situation whereby a property owner had sprayed the entire width of the buffer with herbicide, effectively killing all existing vegetation, while not disturbing the underlying soil. The Department has long maintained that removal of vegetation via cutting and stumping is not permitted within the RPA buffer, except for those activities that are approved by the local government for the purposes of sight line, view, and vista; to remove dead, diseased or dying vegetation, or for pathways, and shoreline erosion control projects as permitted under § 9VAC1-20-130.B.1 of the Regulations. The use of herbicides to completely destroy all existing vegetation would not be included under this provision of the Regulations and therefore, not a permitted activity under this provision.

Furthermore, § 9VAC1-20-130.B of the Regulations states the purpose of the buffer is “[t]o minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life...” and that “a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.” The destruction of existing vegetation through the application of herbicides certainly is not in compliance with the Regulations, as the filtering capacity of vegetation is dependent upon the natural processes that the plants perform through the uptake of nutrients and assimilation of moisture from rain and runoff.

It is the Department’s opinion that the use of herbicides to destroy the RPA buffer vegetation, even without the grubbing of root material, is contrary to the requirements in the Regulations and we would recommend that such activity be treated as a violation of § 9VAC1-20-130.B and § 9VAC1-20-130.B.1. Appropriate remediation should be required and should include the replanting of viable vegetation in the RPA buffer area, including a mixture of woody and

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groundcover vegetation that will provide for erosion and runoff control, and nonpoint source filtering.

I hope this helps you with the situation you described. Should you need additional assistance, please feel free to call me at 1-800-243-7229.

Sincerely,

Shawn E. Smith, AICP
Principal Environmental Planner